# COMPREHENSIVE ELECTRICITY COMPETITION PLAN

## INTRODUCTION

Economic forces are forging a new era in the electricity sector, where electricity prices will be determined primarily by the market rather than by regulation. Under this new system, often called "retail choice," consumers are free to choose their electricity supplier much like the choice of long distance telephone service that has existed for over a decade. Electricity policy is moving in this direction because competition will lead to increased efficiency and thus benefit the economy and the environment.

The importance of this policy change cannot be overstated. The electricity sector is our nation's most capital intensive industry, holding assets with a book value of close to $700 billion. It had total sales of $212 billion in 1996, larger than the telecommunications industry. Electricity generation also has a significant impact on the environment.

In the past, electricity consumers could not choose their supplier. Instead, under State law, utilities generally held monopolies with both a right and responsibility to serve all consumers in a particular area. The State permitted the utility to charge customers a regulated rate for electric power based on the cost of producing such power plus a "rate of return" on investment.

In general, the electric monopoly system has provided reliable power to electric consumers in the United States. However, a monopoly system has a fundamental weakness: it does not provide incentives to be efficient because a monopoly supplier does not have to compete and essentially has a guarantee that its costs will be recovered.

Under electricity restructuring, competition would replace regulation as the primary mechanism to determine the price of electricity at the generation plant. Utilities would be required to open up their distribution and transmission wires to all qualified sellers. The transmission and distribution of electricity would continue to be regulated because they will remain monopolies

for the foreseeable future.

**THE NEED FOR FEDERAL ACTION**

Approximately twenty States have enacted legislation or promulgated regulations establishing retail competition programs. Many of the remaining States have the matter under active consideration. We respect the actions of those States which are in the process of implementing retail competition, and seek to build on, rather than disrupt, those efforts. Nevertheless, effective retail competition cannot happen without Federal legislation. First, based on the laws of physics, electricity flows do not respect State borders. Second, as States remove the constraints of monopoly franchise territories, electricity markets will naturally become more regionalized. Only Federal action can adequately address the needs of these regional markets.

The electric industry is also hampered by statutes which inhibit the development of competitive markets. The entire Federal electricity law framework dates from the New Deal and is premised upon State-regulated monopolies rather than regional competitive markets. Federal law must be updated so that it stimulates, rather than stifles, competition.

Finally, the States alone cannot obtain the full economic and environmental benefits of competition for American consumers. Without comprehensive Federal electricity restructuring legislation, neither State nor Federal regulators will have the necessary tools to ensure that regional electricity markets are truly competitive and operate as efficiently as possible. Moreover, there will be no assurance that support for renewable technologies and other important public purpose programs will continue. Without these Federal initiatives, electricity prices will likely be higher and the environmental gains which we expect under the Administration's plan will not be fully realized.

**BENEFITS OF THE ADMINISTRATION'S COMPETITION PLAN**

The Comprehensive Electricity Competition Plan embodies the Clinton Administration's agenda to grow the economy and improve the environment. We believe that a more competitive electricity industry will benefit individual American consumers and be an overall boon to our economy. It will result in lower prices and a cleaner environment, encourage innovation and new services, increase the reliability of our nation's power supply grid, and save the government money.

The Administration estimates that retail competition will save consumers at least $20 billion a year on their electricity bills. This translates into direct savings to the typical family of four of $104 per year. Indirect savings, which would arise from the lower costs of other goods and services in a competitive market, are $128 per year. Thus, total projected savings for a typical family of four are $232 a year.

Competition will also spark innovation in the American economy, creating new industries, jobs, products and services just as telecommunications reform spawned cellular phones and other new technologies. This will further strengthen our nation's position as the most vibrant and dynamic economy in the world.

Major benefits will also accrue to Federal, State and local governments through lower electricity prices. Total government spending on electricity is approximately $20 billion per year. With competition, these costs are likely to decline by at least 10%, a savings of close to $2 billion per year. This restructuring dividend will help governments maintain balanced budgets into the future while meeting critical public needs.

Restructuring will also produce significant environmental benefits through both market mechanisms and policies that promote investment in energy efficiency and renewable energy. Competitive forces will create an efficient, leaner and cleaner industry. We estimate that our Competition Plan will reduce greenhouse gas emissions by roughly 40 to 60 million metric tons

in 2010. A generator that wrings as much energy as it can from every unit of fuel will be rewarded by the market. Today, a monopoly supplier recovers its costs regardless of whether it uses its fuel resources efficiently. Competition also provides opportunities for consumers to vote with their wallets for green power and facilitates the marketing of energy efficiency services along with electricity. Restructuring also makes possible the introduction of new policy mechanisms such as the renewable portfolio standard and public benefit funding, which will guarantee substantial environmental benefits.

## COMPREHENSIVE COMPETITION LEGISLATION

On March 25, 1998, the Clinton Administration released its original "Comprehensive Electricity Competition Plan." The Administration converted the Plan into legislative language and transmitted its bill, the Comprehensive Electricity Competition Act, to Congress on June 26, 1998. On July 10, Senators Murkowski and Bumpers introduced the bill, by request, in the Senate.

The original version of the Comprehensive Electricity Competition Plan included most of the provisions necessary to achieve the Administration's goals with regard to the restructuring of the electric utility industry. However, several issues were not adequately developed for inclusion in the Plan. The Administration subsequently developed additional provisions centering around the following:

- improving the prospects for competition in the regions served by the Tennessee Valley Authority, the Bonneville Power Administration and other Federal Power Marketing Administrations;
- encouraging the use of environmentally friendly and reliable technologies;
- enhancing consumer protections;
- enhancing the reliability of our electric system;
- providing support for Indian tribes and consumers in remote areas;

- increasing environmental benefits; and
- addressing the impact of competition on potentially affected electric facility workers.

The Administration's specifications for comprehensive electricity competition legislation, outlined below, reflect the need for the simultaneous calibration of many elements in an interconnected statutory framework in order to achieve the desired bottom line: achieving the economic benefits of competition in a manner that is fair to all Americans and improves the environmental performance and reliability of the electricity industry. The legislation's eight main objectives are to: (1) encourage States to implement retail competition; (2) protect consumers; (3) promote competitive markets; (4) assure access to and reliability of the transmission system; (5) preserve public benefits; (6) amend existing Federal statutes to clarify Federal and State authority; (7) encourage efficient technologies, including renewable energy, distributed power and combined heat and power, which would enhance the environmental benefits associated with restructuring; and (8) allow competitive markets to develop in regions served by Federal power systems. The discussion below follows this structure.

## I. ENCOURAGING STATES TO IMPLEMENT RETAIL COMPETITION

It is the policy of the Administration to encourage all States and nonregulated utilities to consider and embrace the benefits of retail competition, while retaining the flexibility to address local needs.

### A. Retail Competition- Flexibility

*Proposal:* *Support customer choice by requiring each utility to permit all of its retail customers to purchase power from the supplier of their choice by January 1, 2003, but permitting States and non-regulated utilities to opt out of the requirement if they find, on the basis of a public proceeding, that consumers would be better served by an alternative policy or the current monopoly system.*

The Administration believes that Federal legislation encouraging retail competition is the best means to obtain the economic benefits of competition while ensuring that States and nonregulated utilities have the opportunity to meet their unique needs. In our view, this approach strikes the proper balance between the need for Federal policy to support competition and the tradition of State determination of retail electricity policy. It also addresses the concerns of some States that a one-size-fits-all approach to retail competition could lead to increased costs in their States. Finally, this approach builds on State restructuring plans that have been enacted to date, rather than disrupting them.

The Administration's approach avoids the constitutional questions that have arisen concerning other retail choice proposals, because it does not require that States administer a Federal law. Instead, States have the ability to opt out of retail competition. See Printz v. United States, 521 U.S. 898 (1997).

B. Stranded Cost Principle

*Proposal:* *The Administration endorses the principle that utilities should be able to recover prudently incurred, legitimate and verifiable retail stranded costs that cannot be reasonably mitigated, including assistance for displaced workers. States and nonregulated utilities would continue to determine recovery of investments, including stranded cost recovery, under State law. The Federal Energy Regulatory Commission (FERC) would have "backup" authority to establish a stranded cost recovery mechanism if a State or a cooperative lacks such authority. States would also be required to consider reducing the stranded cost charge on an electric consumer which efficiently produces energy on-site by a fuel cell or a combined heat and power, distributed power or renewable power facility.*

Some industry observers expect that lower prices resulting from the pressure of competition will eliminate or sharply reduce the ability of some utilities to recover their investments. The inability to recover such investments results in "stranded costs." Put simply, the implementation of a stranded cost policy requires a determination of who is responsible for paying the difference between the cost of production from power plants that were built when costs were high and

today's lower prices -- utility shareholders, ratepayers, or both.

The Administration endorses the principle that utilities should be able to recover prudently incurred, legitimate, and verifiable retail stranded costs arising from the transition to retail competition, if such costs cannot reasonably be mitigated. At the same time, the fundamental authority of States and non-regulated utilities to address this difficult issue should be preserved. Under the Administration's proposal, States would continue to determine recovery of investments, including stranded cost recovery, under State law. However, States would be required to consider reducing the stranded cost charge on an electric consumer which efficiently produces energy on-site by a fuel cell or a combined heat and power, distributed power or renewable power facility.

Nevertheless, to provide States with the ability to ensure that utilities within their borders can recover stranded costs, the Administration recommends that the Federal Energy Regulatory Commission be given the authority to provide a back-up mechanism for stranded cost recovery in particular instances where a State lacks authority to provide such recovery due to State constitutional constraints or other jurisdictional gaps. Authority should also be provided to assure that electric cooperatives have the ability to recover stranded costs.

## II. PROTECTING CONSUMERS

The introduction of retail competition will offer substantial economic and environmental benefits to consumers. Nevertheless, the Administration is mindful that unless consumers are adequately protected, they may not realize the full benefits of retail competition. The Administration accordingly proposes provisions to protect consumers in competitive retail markets.

### A. Consumer Information

*Proposals: The Secretary of Energy would be authorized to conduct a rulemaking to require*

*all suppliers of electricity to disclose information on price, terms, and conditions of their offerings; the type of generation source; and generation emissions characteristics.*

*Create a publicly accessible "Electricity Shopper" database at the Department of Energy (DOE).*

In competitive markets, suppliers will offer a diverse menu of energy products and services with different pricing and billing options. Consequently, consumers will need reliable information so that they can compare the products and prices offered by suppliers and make informed choices. To address this need, the Administration recommends that all electricity suppliers be required to disclose in a uniform, easy to read label, basic information on the price, terms and conditions of service sufficient to enable consumers to make comparisons among various offers.

In addition, customers may wish to choose their supplier based on a consideration of environmental factors affected by their supplier's generation mix. Customers interested in purchasing electricity produced using renewable resources, natural gas or other power sources will need assurances that representations as to generation source and environmental characteristics are true. Participants in State pilot programs have frequently tried to differentiate their products by advertising them as "green." Some of their claims have been misleading, if not fraudulent.

A number of States considering the implementation of retail competition are also exploring the need for consumer disclosure requirements. In fact, the National Association of Regulatory Utility Commissioners passed a resolution in November, 1996, supporting initiatives to require consumer disclosure. While the Administration encourages States to pursue such efforts, we nevertheless believe that, given the current movement toward regional markets, disclosure labeling within and between regions must be uniform. Absent uniform disclosure labeling, consumers may be unable to effectively compare products offered by many suppliers from many different parts of the country. Moreover, uniformity in disclosure requirements will better enable the relevant governmental agencies to verify the claims made by suppliers.

The requirement that suppliers disclose basic information may not necessarily enable all consumers to adequately compare the services available from different suppliers. Accordingly, the Administration proposes that DOE be authorized to establish an "Electricity Shopper" database and website to enable consumers to make easy comparisons of the different services available to them. The Electricity Shopper site would also provide consumers access to energy-efficiency and conservation information regarding both electricity purchase and use options available to save money and improve the environment. Combining disclosure and efficiency information in a single visible tool should enable consumers to become well-informed shoppers.

B. Low-income Access to Electric Service

*Proposal:* *Amend PURPA to require States to hold proceedings to consider a Federal principle that all consumers in the State shall have reasonable access to competitive suppliers.*

Advocates for low-income consumers have expressed concern that these consumers might not share in the benefits of retail competition. They suggest that, for a variety of reasons, low-income consumers may not be an attractive market. All States that have implemented retail competition have established a supplier of last resort, which is intended to assure that all customers in the State have access to retail electric service. However, a supplier of last resort does not guarantee that consumers have access to "affordable" electric service. As with other market segments, the opportunity for real customer choice among a set of alternative suppliers would provide low-income consumers the best opportunity for economical electricity. The Administration's bill proposes that States consider provisions that would require each electricity supplier in a State to offer service to low-income residential customers comparable to the service offered to its other residential customers. This approach would be consistent with other elements of the Administration's proposal by allowing States to retain the flexibility to establish their own approach to protect low-income consumers.

C. Consumer Protection Against "Slamming" and "Cramming"

*Proposal:* *Add provisions which would authorize the Federal Trade Commission to establish and enforce requirements to prevent retail electric suppliers from engaging in the practices of "slamming" and "cramming".*

"Slamming" is the practice of changing a customer's service provider without that customer's knowledge. "Cramming" is the practice of billing a customer for unauthorized or fictitious service. Both slamming and cramming have been a problem in the competitive long distance and emerging competitive local telephone markets. These practices have generated numerous complaints at the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), and at State public utility commissions. The FCC has established procedures for verification of service change requests. In addition, the 1996 Telecommunications Act directed the FCC to establish rules against slamming and cramming.

There is concern that slamming and cramming will also occur in a competitive retail electric market. Experience in the telecommunications field demonstrates the desirability of providing clear Federal authority to address such abuses. In contrast to telecommunications, where the FCC has historically had the primary role for consumer protection, FERC has not played any role in the regulation of retail electric service. The FTC is better equipped to implement this consumer protection program. The Administration's bill provides the FTC necessary authority to establish and enforce anti-slamming and anti-cramming provisions.

D. Aggregation

*Proposal:* *Authorize any person, corporation, cooperative or governmental entity, including a municipality, to purchase retail electric energy on behalf of the members of a group served by one or more distribution utilities subject to retail competition.*

Some have expressed concern that, when retail electric markets are opened to competition, not all consumers will have the same purchasing power. Consumers can increase their purchasing power and thus access to low cost electricity through the process of aggregation.

Aggregation is the process whereby electric consumers join their loads in order to leverage buying power. An aggregate can have a more efficient size, the sophistication to shop electricity markets for lower prices, and the diversity of various customer loads to be able to obtain beneficial price offers from suppliers.

Aggregation is an important tool to ensure that consumers benefit from retail competition. While most States will encourage aggregation, it is essential that State and Federal laws not impose barriers for any entity to participate in aggregation. Therefore, the Administration proposes that it be made clear that no State or Federal law can be applied to impede aggregation in a State or area that has proceeded with retail competition.

### E. Model Retail Supplier Standards

*Proposal:* *Authorize DOE to draft and make available to the States a Model Code proposing certain minimum standards on retail electricity suppliers that could be established to protect consumers.*

State public service commissions, in regulating most utilities, generally ensure that utilities have sufficient financial resources to enable them to meet their obligations to provide consumers with electric service. When retail competition is implemented, the number of suppliers operating in a given State could increase exponentially. State regulators will most likely seek to impose certain requirements on marketers as a condition for selling electricity to consumers in their States. However, unlike the regulation of traditional vertically integrated utilities, most electricity suppliers will be located beyond State boundaries and regulation of these suppliers may require substantial increases in resources. The Federal government can help enable States to protect consumers from "fly by night" electricity providers by making model legislation available to States to help them establish requirements that would protect consumers. While the Model Code would create a Federal benchmark, in keeping with the spirit of the Administration Plan, it would allow the States flexibility to adopt their own approaches for consumer protection.

F. Model Code for Electric Utility Workers

*Proposal:* *Authorize DOE to draft and make available to the States a Model Code containing standards for electric facility workers with regard to safety and reliability.*

Some have expressed concern that the introduction of new players into electricity markets following the advent of retail competition may result in a reduction in the number and use of skilled workers in electric facilities and may cause existing utilities to eliminate worker training programs. The nature of an interconnected grid requires that all facilities connected to the grid operate effectively. A well-maintained and competently run electrical facility will benefit the entire grid, while a poorly functioning facility can affect commerce and compromise grid reliability. The importance of a competent workforce cannot be understated. Accordingly, the Administration proposes that the Department of Energy be authorized to develop a Model Code for electric utility workers for State consideration. Such a code can include standards for worker competency; maintenance, service and inspection; and the number of employees needed to adequately operate and maintain electric facilities.

## III. PROMOTING COMPETITIVE MARKETS

Encouraging States to implement competition is a necessary but not sufficient condition for the realization of competitive markets. Eliminating monopoly franchises and cost-of-service regulation still leaves in place the traditional vertically-integrated utility structure that may not be suited for efficient and effective competitive markets. End-use consumers will not obtain the full benefits of competitive markets unless certain specific issues are addressed, as discussed below.

A. Public Utility Holding Company Act Repeal

*Proposal:* *Repeal of substantive requirements of PUHCA. Provide FERC and State Commissions with additional access to the books and records of holding companies and affiliates to assist regulators in guarding against interaffiliate abuse following repeal of PUHCA, in combination with the other reforms, such as*

*additional merger and market power authority.*

Congress enacted the Public Utility Holding Company Act ("PUHCA") in 1935 to break up the giant interstate utility holding companies that had formed and to preclude the recurrence of holding company abuses. However, many of PUHCA's requirements, such as the requirement that a holding company operate a single integrated utility system, are not compatible with a more competitive electricity market. Indeed, one of the objectives of competition is to encourage efficient builders and operators of generating capacity to participate in markets throughout the nation. Accordingly, the Administration supports the repeal of PUHCA as part of a comprehensive electricity restructuring bill.

Nevertheless, protection of consumer interests -- particularly guarding against cross-subsidization and abusive market power -- remains necessary. To assist in guarding against interaffiliate abuses that may disadvantage customers paying cost-of-service rates, FERC and State Commissions need greater access to the books and records of holding companies and the affiliates of public utilities within the holding companies, as well as additional authorities to address mergers and market power, which are discussed in the next two sections.

B. Merger Review

*Proposal:* *Establish FERC jurisdiction over the merger or consolidation of electric utility holding companies and generation-only companies. Amend the Federal Power Act to clarify that, in reviewing utility mergers, the Federal Energy Regulatory Commission must examine the impact of the merger on the competitiveness of retail markets.*

A simple repeal of PUHCA would create a gap with regard to the regulation of mergers of public utility holding companies. Currently, FERC does not have clear jurisdiction over public utility holding company mergers or consolidations. Accordingly, the Federal Power Act (FPA) should be modified to provide FERC with jurisdiction over the merger of public utility holding companies. In addition, FERC does not have jurisdiction over generation facilities. In a largely

deregulated generation market, mergers of generation-only utilities could result in market power in the generation market, and the Federal Power Act should therefore be amended to provide FERC with jurisdiction over the merger of these entities.

Section 203 of the Federal Power Act requires that FERC review the sale or merger of jurisdictional facilities (i.e. transmission facilities) and jurisdictional power sales contracts. In performing its duties, the Commission has reviewed the impact of mergers and acquisitions on the competitiveness of wholesale electric markets but generally does not review the effect on retail markets. While a State utility commission typically has authority over mergers involving an electric utility located in the State, a neighboring State would not have jurisdiction. Since a merger between utilities located in one or more States can impact the competitiveness of retail electric markets in an entire region, it is appropriate for FERC to examine if the merger would create undue market power or other conditions that would adversely affect retail consumers.

### C. Authority to Address Market Power

*Proposal:* *Authorize FERC to remedy wholesale market power. Authorize FERC, upon petition from a State, to remedy market power in retail markets if the State is implementing retail competition and has insufficient authority to remedy the market power. FERC would be authorized in these circumstances to require generators with market power to submit a plan to mitigate market power, which FERC could approve with or without modification.*

The Commission's rules requiring open and comparable access to transmission services and information (Order Nos. 888 and 889) should largely mitigate market power associated with the control of transmission facilities. However, open transmission access will not, by itself, prevent the exercise of all forms of market power in electricity markets. A utility can possess market power simply as the result of its ownership of all or substantially all of the generation facilities within a market.

FERC currently has the authority to condition merger applications to remedy any potential

market power. Absent a merger application, FERC's only other available tool to address market power is to deny a request for market-based rates. However, such action would severely impede the Commission's ability to promote wholesale competition. To ensure that the development of competition is not hindered by the exercise of market power, the FPA should be amended to give the Commission the authority to remedy concentrations of market power in the wholesale market, including the authority to order the divestiture of assets, if such market power is found.

Under the Administration's approach, States retain the primary responsibility for implementing retail competition. In opening their markets to competition, States are likely to address market power problems. However, because of the regional nature of many markets, a State may be presented with a market power problem that extends beyond its borders and its jurisdiction. Accordingly, the Administration recommends that FERC be authorized to provide "backup" market power remedies, including divestiture of assets, if a State is implementing retail competition, finds that one or more suppliers have market power in those retail markets, has insufficient authority to remedy the market power itself, and asks FERC to take action.

## IV. ASSURING ACCESS TO AND RELIABILITY OF THE TRANSMISSION SYSTEM

To realize a fully competitive market, transmission must be available on a non-discriminatory basis, must be reliable, and must be adequate to accommodate many transactions. In a regulated market, the regulated utilities worked in tandem with their regulators and neighboring utilities to ensure that the transmission system was adequate and secure. However, a competitive market will require a different approach.

### A. Strengthen Electric System Reliability

*Proposal:* *The Federal Power Act should be amended to require FERC to approve the formation of and oversee an organization that prescribes and enforces mandatory reliability standards.*

The electric utility industry, through a tradition of voluntary self-regulation and cooperation, has performed admirably in maintaining reliability over the past thirty years. However, in a highly competitive market environment, a different mix of incentives will be at work. There will be pressures to cut costs and to drive the power grids harder, to squeeze as much economic value out of them as possible. Moreover, since many transmission owners will also be in the power generation and marketing business, there may also be an incentive to exercise control over strategic parts of the transmission system for economic purposes, perhaps using reliability concerns as a pretext.

As a result, Federal legislation should establish a framework that will build upon and maintain the industry's tradition of self regulation, but require all users of the grid to comply with mandatory reliability standards. The FPA should be amended to give FERC the authority to approve and oversee an organization that will prescribe and enforce mandatory electric reliability standards. Federal oversight is required to provide legal support for a private structure. Under this approach, FERC will be given the authority to review all mandatory reliability standards developed by the organization to ensure that they are in the public interest and reflect an appropriate level of reliability. Membership in the self-regulating organization will be open to all entities that use the bulk-power system and should be required for all entities whose behavior is critical to system reliability. Under the oversight of FERC, the private organization system will monitor compliance with the reliability standards and, when necessary, enforce compliance with the standards.

With regard to federal power systems, any actions taken by the organization would need to be consistent with any statutory or treaty obligations of the Federal power systems. In addition, given the various non-power responsibilities of the Bureau of Reclamation and the Corps of Engineers, the organization should take into account the contractual obligations of such entities in developing and implementing reliability standards. Since emergency action to ensure system reliability has not interfered with these contractual obligations in the past, it is assumed that they will not do so in the future.

B. Electricity Outages

*Proposal:* *Create an Electricity Outage Investigation Board to investigate major electricity outages and report its findings to the Secretary of Energy.*

As the nation becomes increasingly reliant on computers and other electronic innovations, major power outages have wreaked havoc on businesses and homes. It is essential that both States and the Federal government develop tools to minimize both the occurrence and impact of these outages. The Department of Energy has traditionally been relied on to evaluate power system failures and develop recommended actions to minimize recurrences. However, without a dedicated in-house capability, it would be difficult for DOE to carry out this function in an increasingly complex competitive market. Concerns have also been raised about the objectivity of analyses which draw heavily on industry sources.

These concerns could be addressed by establishing a board of experts to investigate and report on significant electric outages. An Electricity Outage Investigation Board would investigate major incidents and report its findings and recommendations to prevent future outages to the Secretary of Energy. The Secretary, upon receipt of the outage report, would be able to propose actions necessary to prevent future outages.

C. Transmission Additions

*Proposal:* *Permit the Secretary of Energy to convene joint Federal-State meetings to consider transmission capacity additions.*

Utility decisions to build transmission capacity are generally regulated by the States. While this system generally worked well when vertically integrated utilities generated electricity, transmitted the electricity to their distribution systems, and distributed it to consumers, the separation of generation from transmission and the regional nature of electricity markets has made the planning and construction of new transmission capacity more difficult. In some cases, existing transmission is already fully utilized and power marketers' access to certain markets is

severely limited. While the addition of transmission capacity could alleviate some of these situations, States are, at times, being asked to approve the construction of transmission facilities for the benefit of consumers in other States. Given the environmental, health, and aesthetic concerns associated with transmission lines, States sometimes are reluctant to approve new facilities.

The Administration proposes that the Secretary be given the authority to initiate meetings with representatives of the States in a region needing additional transmission capacity. These meetings would be intended to develop consensus approaches for alleviating regulatory problems associated with transmission constraints.

### D. Authority to Establish and Require Independent Regional System Operation

*Proposal:* *Amend the FPA to provide FERC with the authority to require transmitting utilities to turn over operational control of transmission facilities to an independent regional system operator. Provide that the independent regional system operator should have planning authority and reliability responsibility.*[1]

As a result of FERC Order No. 888, all public utilities are required to provide open and non-discriminatory access to transmission facilities for wholesale buyers and sellers. This rule is intended to reduce a transmission owner or operator's ability to discriminate in the provision of transmission services. However, separation of the operation and control of transmission facilities from generation through participation in an independent regional system operator (RSO) structure would greatly reduce the risk that operation of the transmission system could be distorted to favor some generators or customers over others.

The benefits of the independent operation of the transmission system are clear. A network of RSOs addresses concerns about exercise of market power by transmission owners. An efficiently dispatched and properly priced bulk-power system might not develop absent the establishment of

[1] For a discussion of TVA and Federal PMA participation in RSOs, see discussion, infra.

independent regional system operators. Yet, the unwillingness of some transmission operators to join an RSO could prevent the successful formation of such entities. We propose that FERC be given the authority to require that any transmission owner, regardless of its ownership structure or FERC's jurisdiction over other aspects of its operations, participate in an RSO, and to set other requirements pertaining to RSOs as needed to serve the public interest. We also recommend that the RSO be given authority to conduct planning for the bulk-power system and be responsible for maintaining reliable transmission in the region in accordance with established reliability standards.

### E. Regional Transmission Planning Agencies

*Proposal:* *Amend Federal law to encourage the development of regional transmission planning and siting groups.*

The electric utility industry is moving toward regional markets. The recent proposals for independent regional system operators recognize the importance of aiding regional markets to achieve greater economic and system efficiency. However, an effective and efficient regional market requires the effective planning and siting of new generation, transmission, and distribution facilities. A regional transmission planning agency would best respond to the needs of an evolving regional market.

An interstate compact would be necessary to pursue regional planning and siting, and such a compact must be approved by Congress. The Administration supports legislation which would provide the required Congressional consent for compacts which FERC finds meet specified criteria.

## V. PRESERVING PUBLIC BENEFITS

Existing programs providing support for renewable energy and other important public benefits were designed for a system of regulated markets. These programs require modification to

continue their important contribution towards meeting environmental and economic policy goals within the context of a competitive market. The Administration's proposal on restructuring includes provisions that promote the continued pursuit of public interest goals within the framework of competitive markets.

A. Secure The Future of Renewable Electricity Through a Renewable Portfolio Standard

*Proposal:* *Adopt a Federal Renewable Portfolio Standard (RPS) to guarantee that a minimum level of additional renewable generation is developed in the United States. The RPS would require electricity sellers to cover a percentage of their electricity sales with generation from non-hydroelectric renewable technologies such as wind, solar, biomass or geothermal generation. Power generated on Indian lands would receive twice as many credits. The RPS requirement initially would be set close to the ratio of RPS-eligible generation to retail electricity sales projected under baseline conditions. There would be an intermediate increase in RPS requirement in 2005, followed by an increase to 7.5% in 2010. The RPS would be subject to a cost cap and would sunset in 2015.*

*Prospectively repeal the "must buy" provision of section 210 of the Public Utilities Regulatory Policy Act (PURPA), but preserve existing contracts and exemptions.*

Retail competition has the potential to significantly increase renewable energy's share of the electricity market, because it will allow environmentally-conscious consumers to support green energy technologies with their wallets. Nonetheless, the inherent uncertainty of the transition to competition, the recognition of important environmental and energy diversification benefits from renewables, and the fact that existing PURPA requirements are incompatible with competition and ineffective under present market conditions all suggest that Federal policy towards renewable electricity should be revisited in the context of restructuring. To this end, the Administration supports a Federal Renewable Portfolio Standard that would require all electricity sellers to cover a percentage of their electricity sales with generation from non-hydroelectric renewable sources such as wind, solar, biomass or geothermal energy.

Retail sellers could meet the proposed RPS requirement by generating sufficient renewable

electricity to meet the coverage ratio, or by purchasing tradeable renewable electricity credits (RECs) that would be created and tracked for each unit of RPS-eligible renewable electricity produced, or by some combination of these strategies. Where RPS-eligible and non-RPS eligible fuels are used in the same facility, RECs would be awarded based on the proportion of RPS-eligible renewable fuel multiplied by total generation. However, sources that elect the kind of net metering discussed in this Plan could not also receive RECs.

The Administration proposes that the RPS requirement initially be set close to the ratio of RPS-eligible generation to retail electricity sales projected under baseline conditions. There would be an intermediate increase in the RPS requirement in 2005, followed by an increase to 7.5% in 2010. The RPS would expire in 2015, when the economics and benefits of renewable technologies are expected to be firmly established. The RPS would include a provision for banking of RECs, to encourage a smooth and continuous ramp-up of renewable electricity production during the interval between RPS adjustment points. The RPS would also provide for double credits for renewable power generated on Indian lands. In addition, to hold program costs below a pre-specified ceiling, our proposal provides for a cost cap under which the Department of Energy will issue proxy credits at 1.5 cents per kilowatt hour that can be used by retail electricity sellers to satisfy their RPS obligations. The market-based approach of the RPS mechanisms and the cost cap will assure that we maintain a reasonable balance between the costs of the RPS program and its environmental and energy independence benefits, and will strongly encourage efforts to reduce the costs of renewable electricity generation technologies.

PURPA, enacted in 1978, fostered the commercialization of renewable energy through section 210's requirement that a utility purchase power from cogenerators and renewable energy facilities, known as qualifying facilities (QFs), at the utility's avoided cost. However, in competitive markets, the market access protections for QFs provided by Section 210 of PURPA are no longer needed to ensure fair opportunities for non-utility power producers. Moreover, it is unreasonable to apply a “must buy” requirement to electric utilities in a competitive market, where they have no captive customers required to pay a premium for QF power. We therefore

propose to repeal the "must buy" provision of section 210 of PURPA prospectively in favor of a more flexible and economically efficient RPS. However, the amendments to PURPA should ensure that existing contracts would not be affected by any prospective change in the obligation to purchase under section 210. Moreover, the regulatory exemptions under applicable Federal and State law for existing QFs should also be preserved together with their right to interconnection, backup, and standby power on reasonable terms.

. B. Encourage and Support Continued Funding for Public Benefit Programs

*Proposal:* *Create a public benefit fund of up to $3 billion to provide matching funds to States for low-income assistance, energy efficiency programs, consumer education and the development and demonstration of emerging technologies, particularly renewables. Provide for a rural safety net of up to .17 mills per kilowatt-hour (kwh) if the Secretary of Energy determines that significant adverse economic effects have occurred or will occur as a result of restructuring.*

If not properly implemented, retail competition could lead to reduced support for electricity-related programs that provide important public benefits. Under cost-of-service regulation, programs supporting and promoting renewable generation, energy efficiency and low-income assistance were supported in part through utility rate structures, and utilities recovered the costs of approved programs within their monopoly service area as a part of the overall cost of service. As utilities prepare for competition, such entities will be unwilling to include in their rates the cost of programs not included in the rates of their competitors.

The Administration supports the creation of a public benefit fund (PBF) to provide matching funds to States for low-income assistance, energy efficiency programs, consumer education and the development and demonstration of emerging technologies, particularly renewables. The PBF would be funded through a generation or transmission interconnection fee on all electricity, capped at 1/10 of one cent (1 mill) per kwh. It would be overseen by a Joint Board composed of Federal, State, and Tribal officials who would set standards for fund eligibility. States would have the flexibility to decide whether to seek funds and how to allocate funds among public

purposes. Within each State, programs such as renewable development and energy efficiency would be eligible for funding. State preferences would set the level and mix of eligible programs to be pursued. To the extent the PBF is oversubscribed by States, State requests would be reduced proportionately, as defined by the Secretary. The PBF will sunset after 15 years of operation.

A number of States that plan to open their electricity markets to retail competition are already planning to recover the costs of certain public benefit programs through a non-bypassable distribution charge on all electricity customers. A Federal PBF will both encourage and support the creation of these programs at the State level, and can be structured to give States the flexibility to allocate public benefit funding in a manner that addresses unique State or local needs. A Federal PBF is also justified by the fact that many of the activities in question provide public benefits that transcend State boundaries. Finally, the proposed matching fund amount of $3 billion will encourage States, at a minimum, to preserve the current level of support States provide for public purpose programs.

The Administration's Comprehensive Electricity Competition Plan is expected to benefit consumers in all areas of the country, including rural regions. Competition will spur both incumbent operators and potential new competitors to exploit opportunities for greater efficiency in electricity generation in rural as well as non-rural electric areas. At the same time, rural consumers will continue to benefit from the existing distribution networks In addition, States and non-regulated cooperative and municipal utilities will be able to tailor competition to meet unique local needs and circumstances or opt-out of competition.

Rural America is likely to further benefit from the renewable portfolio standard (RPS). Wind and biomass, which are projected to provide most of the growth in electricity production from renewable sources needed to satisfy the RPS, are concentrated in rural areas. The effect of this provision will be to generate significant economic activity, employment, and local tax revenues for rural communities.

Because some have expressed concerns about the impact of electricity restructuring on rural areas, the Administration has proposed that a "rural safety net" be available should the expectations associated with competition not be realized. Under the safety net provision, a national wires charge of up to .17 mills per kwh would be available to generate funds if the Secretary of Energy determines that competition has adversely impacted rural consumers. The rural safety net would be administered through the PBF, but, unlike the PBF, funding for rural assistance programs will not expire after 15 years.

C. Net Metering

*Proposal:* *Make consumers eligible for net metering and require that distribution service providers assure the availability of interconnection, subject to appropriate nondiscriminatory safety standards. The provision should apply only to very small (up to 20 kW) renewable energy projects, and be subject to a cap determined at the State level. Clarify State authority to require that retail suppliers offer net metering services to any customer that requests such services.*

Net metering allows customers to offset their electricity consumption with small-scale on-site generation over a billing period. Net metering accordingly provides an incentive for electricity users to install small-scale on-site renewable generation sources in order to reduce electricity generation from conventional sources. The net metering customer maintains the benefit of connection to the power network, but saves on both transmission and distribution charges and power charges when renewable energy is being generated.

A Federal requirement to provide net metering arrangements would provide support for dispersed, small, renewable generation resources. Accordingly, the Administration recommends that all consumers be made eligible for net metering. Moreover, the provision should apply only to very small (up to 20 kW) renewable energy projects.

While the Administration's net metering provision provides that all customers are entitled to net metering service, an issue has been raised regarding a State's authority to impose its own net

metering requirement. To clarify that States have the authority to impose net metering requirements, the net metering provision in the Administration's bill provides that neither PURPA nor the FPA preempts a State from imposing a net metering requirement.[2]

D. Indian Tribe Assistance

*Proposal:* *Federal legislation should (1) create a grant program to provide Indian tribes with the information necessary to determine the best way to participate in electricity markets and add the infrastructure necessary to generate and/or purchase electricity to serve tribal needs; and (2) establish an Office of Indian Energy Policy and Programs.*

The Administration's bill encourages States to adopt retail competition to improve generation efficiency, lower electricity costs, and improve the environment. Some Indian tribes, however, might not be able to fully realize these benefits because they are not connected or are inadequately connected to the grid. In addition, because of Indian governmental sovereignty, State laws restructuring the electric industry will likely have a mixed impact on Indian tribes.

Analysis is needed to assess the most cost-effective and efficient means for Indian tribes to participate in new electricity markets. Indian tribes will need to establish appropriate regulatory and physical infrastructures to serve tribal needs. The Department of Energy could provide tribes expertise and grants, in consultation with the Secretary of the Interior and the Secretary of Agriculture, to analyze tribal electricity needs, the availability of natural resources for electricity generation, opportunities for transmission enhancement/construction, and effects of State restructuring programs on tribal electricity supplies. In addition, funding should also be authorized for electricity infrastructure grants to Indian tribes.

Finally, the Administration recommends the establishment of an Office of Indian Energy Policy and Programs in the Department of Energy. The Office would coordinate and implement energy,

[2] For discussion on interconnection requirements for net-metering facilities, see discussion on interconnections for on-site generating facilities, infra.

energy management and energy conservation programs for Indian tribes.

E. Remote Communities

*Proposal:* *Authorize electrification grants for remote communities.*

The Comprehensive Electricity Competition Plan proposed by the Administration is projected to provide significant benefits to electricity consumers connected to the three major power grids that serve the continental United States by accelerating the transition to competitive electricity markets. However, the situation of remote communities that may not be connected to the major power grids or that have transmission constraints merits particular attention. These communities may not have access to competing suppliers and also face high costs and environmental concerns, which together can pose a significant barrier to economic development. To help residents of remote areas, the Administration proposes a provision that would authorize appropriations for grants to address the electricity needs of small, remote communities.

F. Southeast Alaska Electrical Power

*Proposal:* *Appropriations should be authorized as necessary to help construct, along with State and local funds, a project to provide adequate electric power to communities in the greater Ketchikan area in southeast Alaska and provide for a more efficient and environmentally friendly electric system to those communities, including an intertie.*

As the population and business activity in Southeastern Alaska has grown, the demand for electricity has significantly increased. Unfortunately, because there is no electric grid to speak of, almost every community in Southeast Alaska is required to generate its own power. Although there is a substantial amount of hydropower capacity and potential in the region, many small communities are forced to rely on diesel generation, which is both more expensive and harmful to the environment. In addition, some of the larger cities are utilizing their full capacity of hydropower and are on the verge of having to meet new demand with diesel-fired generating capacity.

Interested parties including the State of Alaska are considering a construction project to ensure adequate electric power to the greater Ketchikan area. If additional power is necessary and cannot be provided in an environmentally sound way, Ketchikan may be forced to construct additional generating capacity from diesel generators that are noisy, polluting and expensive to operate. The Administration's bill authorizes up to a $20 million appropriation to provide adequate power to Ketchikan. This authorization does not waive any other laws applicable to the planning and construction of a project.

G. Nitrogen Oxide Trading Authority

*Proposal:* *Clarify EPA authority to require a cost-effective interstate trading system for nitrogen oxide (NOx) pollutant reductions addressing the regional transport contributions needed to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. No change is proposed to existing EPA authority to determine geographic coverage or level of reductions required in addressing regional transport contributions.*

Our restructuring proposal is likely to provide net benefits to the environment by reducing emissions of nitrogen oxides and carbon dioxide relative to baseline projections for 2010. Notwithstanding these benefits, the work of the Ozone Transport Assessment Group (OTAG), a multi-year consultative process that included representatives from States, public interest groups, and electric utilities throughout the Eastern United States, suggested that a further substantial reduction in NOx emissions over a wide area is needed to attain the ambient health-based standard for ozone in the Northeast. Electric generators are a major source of NOx emissions.

In the fall of 1998, the Environmental Protection Agency (EPA) issued final rules designed to address the regional transport of $NO_X$ emissions that contribute to violations of the NAAQS for ozone through a set of $NO_X$ emissions budgets applicable to 22 eastern States and the District of Columbia under authority provided in Section 110 of the Clean Air Act. EPA's proposal is based on the work of OTAG.

Both air quality and economic interests favor the use of efficient market-based instruments to achieve the emissions reductions necessary to address adverse regional transport impacts. To this end, EPA will allow interstate trading of budgeted emissions allowances. However, States may be reluctant to take advantage of this flexibility. The Administration therefore proposes to clarify EPA's authority to require a cap and trade system for nitrogen oxides.

Our proposal would not affect either the level of emissions reductions, or the geographic area over which reductions should be made, to address regional transport of emissions. The ongoing regulatory processes under existing statutory authority are the appropriate venue for addressing these technical issues.

H. Air Emissions

The Administration believes that retail competition will deliver economic savings, cleaner air and a significant down-payment on greenhouse gas emissions reductions. We estimate that our Competition Plan will reduce greenhouse gas emissions by 40 to 60 million metric tons by the year 2010.

As previously discussed, our plan includes a PBF of up to $3 billion annually (1.0 mill/kWh,) to match State commitments for financing energy efficiency, renewable energy, and other public benefit programs; "green labeling" provisions to help consumers identify and choose power from environmentally friendly generators; an RPS requiring that at least 7.5 percent of electricity sales be generated from non-hydroelectric renewable sources, subject to a cost cap; a net metering provision encouraging the installation of small renewable systems; trading authority for $NO_X$ emissions to facilitate cost-effective, market-driven $NO_X$ reductions; and removal of barriers for the use of distributed power and combined heat and power facilities. In addition, we expect that retail competition will strengthen incentives to improve efficiency, and reduce the two-thirds waste of energy currently associated with fossil-fuel generation of electricity -- thereby further cutting greenhouse gas emissions, saving money, reducing pollution, and conserving fuel.

These provisions will produce cleaner air and reduced greenhouse gas emissions, although the precise impacts are difficult to predict. We intend to work with the Congress to ensure that any unanticipated consequences are addressed quickly and in keeping with the Administration's climate change policies.

Therefore, those making investment decisions through the period of restructuring should recognize the Administration's strong commitment to reducing greenhouse gas emissions on the timetable set out in the President's climate change policy. We are not asking this Congress for carbon cap-and-trade authority as part of the Administration's electricity restructuring proposal. The Administration's climate change policy calls for cap-and-trade authority to be in place by 2008, and the Administration will consider in consultation with Congress whatever legislative vehicle is most appropriate for this purpose.

In the meantime, the Administration will seek to ensure that we have accurate, accessible data on the progress toward cleaner air and carbon dioxide reduction. Under current law, the utility industry reports various types of emissions. The President is directing these agencies to coordinate their data and provide him with a jointly prepared annual report on carbon dioxide emissions from electricity generation within six months after the end of each calendar year. A copy of that Directive accompanies this Plan.

## VI. DEVELOPING COMPETITIVE MARKETS SERVED BY FEDERAL POWER SYSTEMS

The 1998 version of the Comprehensive Electricity Competition Plan was completed before the Administration was prepared to make comprehensive recommendations concerning the introduction of competition in the Tennessee Valley Authority service area and the appropriate regulatory treatment of the Federal Power Marketing Administrations (PMAs). The Administration bill now includes provisions to address the appropriate role for the Tennessee Valley Authority and the Federal PMAs in future competitive markets and the regulatory changes necessary to ensure that Federal ownership of transmission facilities does not impede

competition.

## A. THE TENNESSEE VALLEY AUTHORITY

The Tennessee Valley Authority ("TVA" or "the Authority") is a government owned corporation created by the TVA Act of 1933 with the statutory mission to provide electric power, flood control, navigational control, agricultural and industrial development and other services to a region including all of Tennessee and parts of six surrounding States.

In 1959, Congress amended the TVA Act to create the so-called "TVA fence" by limiting TVA to sales of electricity to its own wholesale requirements customers and industrial retail customers inside its service territory and to economy exchanges with the fourteen surrounding utilities with whom it already did business. Other utilities are limited in selling wholesale power inside the fence due to the all-requirements contractual arrangements between TVA and the distribution utilities in the region and provisions in the FPA which generally provide that TVA may not be compelled to wheel power that would be consumed inside the fence.

TVA is governed by a three member board of directors, appointed by the President and confirmed by the Senate. The board manages TVA, both as to power and non-power programs, and is not subject to regulatory oversight of its planning and rates for power. TVA is not subject to either Federal or State regulatory commission jurisdiction, except to the limited extent that the Authority is subject to FERC regulation pursuant to sections 211 and 212 of the FPA for transmission through the TVA service territory but not to the Authority's existing customers. In addition, TVA is exempt from antitrust laws.

TVA supplies power to 159 retail distributors in its service territory. The distributors are all either municipal or cooperative utilities that purchase power pursuant to full requirements contracts that do not allow the distributors to acquire power from sources other than TVA. They also give TVA the right to set retail rates. Until recently, the contracts were essentially evergreen

with ten year notice provisions for termination. Some distributors have entered into contracts that shorten these notice provisions. TVA also sells directly to 67 large industrial and Federal customers.

1. Transmission Rate Jurisdiction

*Proposal:* *Subject TVA transmission to FERC jurisdiction under sections 205 and 206 of the FPA, but condition FERC's exercise of its authority so as to assure that TVA can recover its costs and meet its other recognized responsibilities, as appropriate. Open access requirements for power wheeled through the TVA service territory shall go into effect upon enactment of this Act; open access requirements for power wheeled into the TVA service territory shall go into effect January 1, 2003.*

TVA, along with all other currently non-Federal Power Act jurisdictional transmitting utilities (municipal, cooperative, State and Federal utilities), should be subject to the same jurisdiction for transmission of electricity that applies to investor-owned utilities. Currently, the Commission has jurisdiction only over the rates, terms, and conditions of transmission services of public utilities as defined by the FPA. It is critical to the development and proper functioning of competitive markets that FERC be given jurisdiction over the transmission facilities of all utilities, including TVA.

2. Antitrust Law

*Proposal:* *TVA should be subject to the requirements and behavioral restrictions of antitrust laws with injunctive relief in court, but without the imposition of damages, treble damages or attorneys' fees.*

TVA is currently exempt from applicability of the antitrust laws. Subjecting TVA to antitrust requirements with injunctive relief would allow courts to require the Authority to cease any activities found to be unfair trade practices or anti-competitive behavior.

3. Retail Regulation of Electric Energy Sales

*Proposal:* *Provide that TVA does not have authority to act as regulator of the retail rates for*

*electric energy sold by TVA's wholesale customers to end users. Allow States in the TVA region to determine whether they will regulate retail electricity sales in the TVA region.*

All of TVA's existing wholesale customers are municipal or cooperative utilities who serve as retail distributors in the region. In other parts of the nation, States have the right, having authorized creation of these retail entities and serving as regulators of retail electricity sales, to regulate such distributors. Many do not do so, since these entities are not for profit and have no incentive to overcharge their customers. Accordingly, the Administration sees no reason to preempt States from choosing whether to regulate the distributing utilities in the TVA region in the future.

4. The TVA Fence

(a). TVA Sales Inside and Outside the Fence

*Proposal:* *Remove the statutory bar on sales outside TVA's existing territory, effective January 1, 2003. TVA should be allowed to sell power at wholesale, but not retail, outside its existing territory. TVA should be allowed to sell at retail to a distributor's customers inside TVA's existing territory only if the distributor's firm power purchases from TVA are 50 percent or less of its total retail sales or if the distributor otherwise agrees to the sale. Existing retail customers should have the right to continue as customers of TVA.*

TVA is prevented by law from selling outside its territory as defined in the TVA Act except to utilities with whom it had exchange power arrangements on July 1, 1957. If other suppliers are to compete inside TVA's service territory, TVA must be allowed to sell outside its existing territory or face a shrinking customer base, which would prevent TVA from recovering its costs and repaying its debt.

On the other hand, TVA should be able to sell at retail to existing customers and to new customers inside its existing service territory under conditions that are agreed to by the retail distributor in whose service territory any potential new customers might lie. Moreover, TVA

should be permitted to sell to retail customers in a distributor's service territory if the distributor's firm power purchases from TVA are 50 percent or less of its total retail sales.

(b). Anti-Cherry Picking Provisions

*Proposal:* *Permit other utilities to sell power in the TVA region, effective January 1, 2003.*

TVA is exempt from the authority of FERC to order transmission service under sections 210, 211, and 212 of the FPA if the transmission service is for power that will be consumed inside the TVA service territory. These provisions, known as the "anti-cherry picking" provisions, were enacted as part of the Energy Policy Act of 1992 and were intended to protect TVA from a circumstance where others could compete inside its service territory but TVA could not compete outside. Since we propose the repeal of the prohibition on TVA wholesale sales outside its territory, that protection is no longer necessary. Moreover, without repeal of these provisions, there would be no prospects for competition in the entire TVA region because the distributing utilities and consumers in the region would have no alternatives but to continue purchasing power from TVA. Accordingly, we propose that other entities be permitted to sell power at both wholesale and retail (assuming the implementation of retail competition) in the TVA region after January 1, 2003.

5. Wholesale Power Contracts

*Proposal:* *Require TVA to renegotiate existing full-requirements contracts with its distributors within one year of enactment in order to allow for shorter contract terms, purchase of power from sources other than TVA after January 1, 2003, and stranded cost recovery, and to provide that customers are not liable for the costs of new plants other than those specified in contracts. If TVA and its customers cannot reach agreement on the terms of a new contract within one year, parties should be required to submit the dispute to FERC for resolution.*

TVA's wholesale power contracts with its distribution utility customers are ten-year, full-requirements contracts that do not allow distribution utilities to acquire power or resources from other providers. The contracts contain ten-year notice of termination provisions that are self-renewing and also give TVA the right to regulate the retail rates of its distribution customers. In

order for TVA's customers to be able to participate in a competitive market, these contracts must be revised.

6. Stranded Cost Recovery

*Proposal:* *Authorize FERC to adjudicate recovery of stranded costs from departing customers. Such costs should be borne by those TVA customers for whom the costs were incurred. The time period for recovery should not extend beyond October 1, 2007, unless otherwise agreed to by the parties.*

The Administration's Plan contains a preference for stranded cost recovery. Accordingly, TVA and its distributors should also be provided the opportunity to recover their stranded costs. Since no State would have jurisdiction over TVA, there must be a Federal arbiter to provide for the Authority's recovery of its stranded costs.

7. Participation in a Independent Regional System Operator

*Proposal:* *Authorize TVA to turn over operational control of transmission facilities to an independent regional system operator.*

The Administration bill gives FERC the authority to require transmitting utilities to turn over operational control of transmission facilities to an independent regional system operator (RSO) to facilitate competition. An RSO would allow for the independent operation and control of transmission facilities separate from a utility's marketing functions. TVA is included within the definition of transmitting utilities, and it is the intent of the bill to ensure that FERC has the authority to require all transmitting utilities to participate in RSOs. To avoid any question of TVA's legal authority to participate in RSOs absent a FERC order, we have added a provision to the bill to clarify that TVA may voluntarily participate in an RSO.

## B. THE BONNEVILLE POWER ADMINISTRATION

The Bonneville Power Administration ("BPA" or "Bonneville") is a PMA that markets

wholesale electrical power and operates and markets transmission services in the Pacific Northwest. The power comes from 29 Federal dams, one non-federal nuclear plant, and various renewable resources. Bonneville serves a 300,000 square mile area including Oregon, Washington, Idaho, Western Montana, and parts of Northern California, Nevada, Utah, and Wyoming. In addition, Bonneville's transmission system exceeds 15,000 circuit miles, provides more than three-fourths of the region's high-voltage transmission capacity, and includes major transmission links with Canada and other regions within the United States.

Bonneville's rates currently are developed through a formal regional process pursuant to certain ratemaking standards and filed with FERC for approval or remand under those standards. One of BPA's primary duties is to establish power and transmission rates to repay "the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs." 16 U.S.C., § 839e(a)(2)(A). These other costs include amounts attributable to efforts to mitigate harm to and enhance fish and wildlife populations in the Columbia River Basin, which currently exceed $400 million annually, and over $7 billion in Washington Public Power Supply System and other Bonneville-backed debt. At the end of FY 1997, Bonneville's outstanding Treasury repayment obligations exceeded $7.6 billion.

1. Transmission Jurisdiction

*Proposal:* *Subject BPA to FERC authority under sections 205 and 206 and any other relevant provisions of the FPA for purposes of determining transmission rates, but condition FERC's exercise of its authority so as to assure that BPA meets its other recognized responsibilities.*

The Administration Plan proposes that BPA transmission rates be subject to FERC jurisdiction under sections 205 and 206 of the FPA. Sections 205 and 206 require FERC to review proposed transmission rates under its just and reasonable and not unduly discriminatory standard. Providing FERC with uniform jurisdiction over all transmission owners would enable FERC to ensure the development of open and competitive wholesale markets. Moreover, application of

sections 205 and 206 authority would enable FERC to apply its open transmission access requirements to BPA.

While the Administration supports the application of FERC's sections 205 and 206 jurisdiction to BPA with regard to their transmission rates, because of the other important responsibilities of BPA, and the need to assure that the Federal investment in the Federal power system is repaid, we propose that FERC's exercise of its authority under sections 205 and 206 be conditioned to assure that Bonneville can meet its cost recovery and other statutory obligations.

2. Participation in an Independent Regional System Operator

*Proposal:* *Authorize BPA to turn over operational control of transmission facilities to an independent regional system operator (RSO).*

The Administration bill gives FERC the authority to require transmitting utilities to turn over operational control of transmission facilities to an RSO to facilitate competition. An RSO would allow for the independent operation and control of transmission facilities separate from a utility's marketing functions. BPA is included within the definition of transmitting utilities, and it is the intent of the bill to ensure that FERC has the authority to require BPA participation in RSOs. To avoid any question of BPA's legal authority to participate in RSOs, we have added a provision to the bill to clarify that BPA may voluntarily participate in an RSO.

3. Recovery by BPA of Non-recoverable Costs

*Proposal:* *Allow the Administrator to propose and the Commission to establish a limited cost recovery transmission surcharge mechanism to provide for the recovery of otherwise nonrecoverable costs, such as future additional fish and wildlife costs.*

Under FERC's definition of stranded costs, a utility may recover only historical embedded costs. Losses for future investment do not satisfy the definition of stranded costs because utilities presumably have control over their investments once retail competition is introduced. Unlike other utilities, however, BPA has a significant future cost variable over which it has no control --- fish and wildlife costs – which is estimated to range from $438 to $721 million annually for the

2002-2006 period.

Under most estimates of future market conditions, Bonneville is expected to be able to recoup all of its costs. However, if alternative power prices were to unexpectedly fall below Bonneville's, or if BPA's costs were to unexpectedly rise substantially, a cost recovery mechanism would be needed to avoid shifting the responsibility for payment to the United States Treasury.

The Administration proposes that the Administrator be given the authority to propose, and the Commission the authority to approve, a limited transmission surcharge mechanism that would be imposed on a competitively neutral basis, does not apply to the transmission of power being consumed outside the region, and would be designed to minimize bypass of the transmission system.

The Administration further recommends that any amounts collected through the surcharge mechanism be treated as a loan to Bonneville's power function, and that the loan be repaid with interest once the power function is able to meet its cost recovery and Treasury repayment obligations on an annual basis. This requirement conforms to current requirements that the power and transmission functions each fully pay their own costs over time, and further diminishes any possibility that the surcharge mechanism be viewed as a vehicle to enhance the competitiveness of Bonneville's power products.

### C. THE WESTERN AREA POWER ADMINISTRATION AND THE SOUTHWESTERN POWER ADMINISTRATION

The Western Area Power Administration (WAPA) and the Southwestern Power Administration (SWPA)[3] market surplus power from facilities constructed under the Reclamation Acts and the

[3] Because the Southeastern Power Administration (SEPA), unlike WAPA and SWPA, does not own any transmission facilities and because we are proposing changes only with respect to transmission authority, we do not include any proposed changes with respect to SEPA.

Flood Control Act of 1944. As marketers of Federal power, WAPA and SWPA must satisfy certain statutory requirements. Such entities must give a preference in the sale of power to municipalities and other public bodies or agencies, and to electric cooperatives. Once WAPA or SWPA develops appropriate rates consistent with governing statutes and regulations, the Deputy Secretary of Energy, under authority delegated by the Secretary of Energy, approves the rates on an interim basis, and FERC conducts a review of the rates to determine whether they are the lowest possible to customers consistent with sound business principles and whether the revenues generated by the rates are sufficient to recover the costs of producing and transmitting the electric energy. The Commission may reject the rate determinations only if it finds them to be arbitrary, capricious, or in violation of the law. The Commission does not develop a record of its own, but only affirms or remands the rates submitted to it for final review.

1. Transmission Jurisdiction

*Proposal:* *Subject WAPA and SWPA to FERC authority under sections 205 and 206 of the FPA and any other relevant provisions of the FPA for purposes of determining transmission rates, but condition FERC's exercise of its authority so as to assure that SWPA and WAPA meet their other recognized responsibilities.*

The Administration Plan proposes that PMA transmission rates be subject to FERC jurisdiction under sections 205 and 206 of the FPA. Sections 205 and 206 require FERC to review proposed transmission rates under its just and reasonable standard. Providing FERC with uniform jurisdiction over all transmission owners would enable FERC to ensure the development of open and competitive wholesale markets. Moreover, application of sections 205 and 206 authority would enable FERC to apply its open transmission access requirements to WAPA and SWPA.

While the Administration supports the application of FERC's sections 205 and 206 jurisdiction to WAPA and SWPA with regard to their transmission rates, because of the other important responsibilities of these entities, and the need to assure that the Federal investment in the Federal power system is repaid, we recommend that FERC's exercise of its authority under sections 205 and 206 be conditioned to assure that these PMAs can meet their cost recovery and other

statutory obligations.

2. Participation in a Independent Regional System Operator

*Proposal:* *Authorize WAPA and SWPA to turn over operational control of transmission facilities to an independent regional system operator (RSO).*

The Administration bill gives FERC the authority to require transmitting utilities to turn over operational control of transmission facilities to an RSO to facilitate competition. An RSO would allow for the independent operation and control of transmission facilities separate from a utility's marketing functions. WAPA and SWPA are included within the definition of transmitting utilities, and it is the intent of the bill to ensure that FERC has the authority to require WAPA and SWPA participation in RSOs. To avoid any question of the legal authority of SWPA or WAPA to participate in RSOs, we have added a provision to the bill to clarify that SWPA and WAPA may voluntarily participate in an RSO.

3. Recovery by SWPA and WAPA of Non-recoverable Costs

*Proposal:* *Allow the Administrator to propose and the Commission to establish a limited cost recovery transmission surcharge mechanism to provide for the recovery of otherwise nonrecoverable costs, such as future additional fish and wildlife costs.*

Under FERC's definition of stranded costs, a utility may recover only historical embedded costs. Losses for future investment do not satisfy the definition of stranded costs because utilities presumably have control over their investments once retail competition is introduced. Unlike other utilities, however, SWPA and WAPA may have a significant future cost variable over which they have no control --- fish and wildlife costs.

The Administration proposes that the Administrator be given the authority to propose, and the Commission the authority to approve, a limited transmission surcharge mechanism that is imposed on a competitively neutral basis, does not apply to the transmission of power being consumed outside the region equitable, and is designed to minimize bypass of the transmission

system.

The Administration further recommends that any amounts collected through the surcharge mechanism be treated as a loan to power function, and that the loan be repaid with interest once the power function is able to meet its cost recovery and Treasury repayment obligations on an annual basis. This requirement conforms to current requirements that the power and transmission functions each fully pay their own costs over time, and further diminishes any possibility that the surcharge mechanism be viewed as a vehicle to enhance the competitiveness of SWPA or WAPA's power products.

## VII. ENCOURAGING EFFICIENT DISTRIBUTED POWER AND COMBINED HEAT AND POWER

Distributed power ("DP") is any small-scale power generation technology that is intended to serve a discrete set of consumers at a site closer to these consumers than a central generation station. While the size of central generation stations typically range from 200 MW to 1,200 MW, distributed power is generally substantially smaller. Small low-cost modular generators include fuel cells, gas turbines, and micro turbines, as well as combustion engines, wind, photovoltaics, and small-scale hydropower.

DP offers numerous benefits. First, because it is sized to satisfy a single user's on-site requirement or to serve a group of users close to the source, costly upgrades to the transmission and distribution systems can be avoided. Second, generating power at the site where it is used is more efficient because it avoids energy losses that occur along transmission and distribution lines. Third, DP enables large commercial and industrial customers to shave their peak power needs, thereby reducing their costs while providing reliability benefits to all users of the transmission and distribution systems. Fourth, DP provides substantial environmental benefits through the introduction of cleaner, more efficient technologies. Finally, DP can provide customers with standby, emergency power or high-quality uninterruptible power for critical applications.

Combined heat and power ("CHP") is defined as a system using a single fuel source to produce either electric or mechanical power and useful thermal energy at the point of use. By combining heat and power production, up to 90 percent of the useful energy in fuel can be put to beneficial use in some applications, in contrast to the 33 percent conversion efficiency in typical conventional steam-electric generating plants. By making use of energy that would be wasted in a facility dedicated solely to either power or heat production, CHP systems can lower energy costs and reduce the amount of fossil fuels required to meet the total power and heat needs of an industrial facility or building, leading to reductions in emissions of greenhouse gases and other pollutants. Many clean distributed power technologies also offer new opportunities for small-scale combined heat and power applications.

While retail competition itself will provide an important impetus to the development of both DP and CHP systems, a number of other significant barriers impede the effective deployment of these technologies. Given the significant economic, reliability, and environmental benefits of these technologies, a truly comprehensive plan for the electricity sector should include actions to reduce these barriers.[4]

1. Depreciation Treatment of Distributed Power

*Proposal:* *DP assets used in industrial, commercial or residential applications would be assigned a 15 year recovery period for purposes of depreciation.*

The present tax code treatment of DP technologies may have the effect of discouraging their use in many types of applications. Depreciation lifetimes for particular pieces of equipment, such as turbine engines, may be much longer when the equipment is used as part of a DP facility than when it is used in another application, such as airplane propulsion. For example, when DP technologies are used in commercial buildings, such assets may be treated as structural components and are therefore subject to straight-line depreciation over a 39 year lifetime. In the

[4] The Administration also proposes a favorable transition charge treatment for efficient CHP and DP systems for on-site generation, discussed in the stranded cost section, supra.

view of the Administration, DP technologies should be encouraged by clarifying that the depreciation schedule for all DP equipment is 15 years.

2. Reducing Regulatory Impediments to CHP and DP

*Proposal:* *Reinforce EPA's current emphasis on performance- and output-based environmental standards in Federal and State air programs.*

The Administration's Plan is projected to provide net benefits to the environment by reducing emissions of NOx and carbon dioxide. Greater environmental benefits are possible within a competitive industry by removing unnecessary barriers to increased deployment of efficient technologies, such as CHP and DP. To further encourage the deployment of efficient technologies, including CHP and DP, the Administration proposes to better accommodate these technologies within the framework of our existing environmental laws.

**New Source Performance Standards**: In setting categorical emissions standards under new source provisions of the Clean Air Act, EPA is required to consider the energy requirements of standards (See Clean Air Act section 111(a)(1)). In the past, these standards have generally not fully addressed the air quality benefit of emissions avoided through the efficiency provided by CHP and DP. For example, emissions standards for power generation have for the most part been set in terms of allowable emissions per unit of fuel consumed.

More recently, however, Federal and State environmental regulators have been considering output-based approaches in standard-setting, all within current statutory authorities. For example, the September 1998 revision to Federal new source performance standards for nitrogen oxide emissions from fossil-fuel steam generating plants changed to an output-based standard, and provided limited credit for recovered steam output. Under existing law, EPA periodically reviews each new source standard, updating standards as necessary to reflect improvements in technology. Given the advantages of an output-based approach, the EPA plans to review and update standards on an output-basis, wherever appropriate, to acknowledge the benefit of

emissions avoided through higher efficiency.

**Output-based NOx Allocations**. Another recent example of Administration efforts to recognize benefits of efficient power technologies within existing authorities is the EPA work under the recent ozone transport rule (the "NOx SIP call," finalized in October 1998, and covering 22 eastern States) to develop an output-based methodology for source nitrogen oxide emissions allocations. States will be able to use the output-based approach in the future. Stakeholder groups are now meeting to address issues in developing and implementing an output-based system, with a proposed methodology targeted for public comment later in 1999, and final guidance to follow in 2000. As part of the pending proposal for Federal Implementation Plans which may be instituted if States are unable to meet the Federal requirements in the NOx SIP call, EPA has requested comment on several NOx emissions allocation schemes, including some that are output-based. As part of this rulemaking, EPA will evaluate possible use of an output-based NOx allocation scheme in cases where a Federal program and NOx emissions allocations should become necessary.

**Permitting Activities**. The responsibility to issue air quality permits for new facilities rests primarily with the States, since they have the obligation of ensuring that ambient air quality standards are met within their borders. Although Federal statutory requirements for permitting vary based on the amount of emissions and location of a facility, administrative costs for developing a permit application can be an important barrier for smaller CHP and DP facilities that are subject to permitting. In recent discussions exploring development of the "Small Facility Voluntary Reduction Credits Program," EPA acknowledged the need to better inventory most categories of area ("minor") sources and to modify conditions for providing regulatory credit for emissions reductions in order to facilitate participation of area sources in voluntary reduction programs, such as emissions trading. This voluntary small facility effort includes features that can also be directed to address many of the permit needs of new small CHP and DP facilities, thus reducing barriers to deployment by reducing administrative costs.

EPA, together with the Department of Energy, will work with industry groups and States to encourage broader use of CHP by 1) developing CHP-specific guidance to clarify air permitting requirements and practices so as to promote greater certainty; 2) clarifying definitional issues associated with permitting CHP facilities so as to promote consistency and uniform treatment; and 3) work with States to assist in expediting air quality permit reviews of proposed CHP and DP facilities, regardless of size. These activities, authorized under existing law and consistent with ongoing programs at the agencies (e.g., CHP Challenge), will provide joint-agency outreach to industries and States focusing on the Administration's support for CHP and DP.

3. Interconnections for On-site Generating Facilities

*Proposal:* *On-site generating facilities should be entitled to interconnection with the distribution grid for purposes of sales, access to backup power, or for any other reason determined appropriate by the FERC. DOE should prescribe safety and power quality standards and rules necessary for interconnections of an on-site generating facility with a distribution system.*

The ability to interconnect new generation to the electrical grid is critical to achieving the economic and environmental benefits of competitive electricity markets. Unwarranted impediments to interconnection provide a means for incumbent utilities to prevent entry and exert market power. Moreover, interconnection standards vary widely from utility to utility, thereby discouraging widespread use of distributed generation. For these reasons, the Administration proposes a provision to establish and implement national, uniform, and non-discriminatory technical interconnection standards for the hookup of distributed power generation systems to distribution utilities. State jurisdiction over the rates, terms, and conditions of interconnection to distribution systems is preserved, except for the technical requirements of interconnection.

4. Tax Credit for Combined Heat and Power System Property

*Proposal:* *Provide an 8 percent investment tax credit for CHP systems placed in service in calendar years 2000 through 2002.*

The Administration has included in its budget proposal an investment tax credit for CHP systems. The proposal would establish an 8 percent investment credit for qualified CHP systems placed in service in calendar years 2000 through 2002. The measure would apply to large CHP systems that have a total energy efficiency exceeding 70 percent and in smaller systems that have a total energy efficiency exceeding 60 percent.

An investment tax credit for CHP assets is expected to encourage increased energy efficiency by accelerating planned investments and inducing additional investment in such systems. The increased demand for CHP equipment should, in turn, reduce CHP production costs and spur additional technological innovation in improved CHP systems. Given the significant economic and environmental benefits expected from this proposal, the Administration encourages Congress to enact an investment tax credit for CHP systems.

## VIII. AMENDING EXISTING FEDERAL STATUTES TO CLARIFY FEDERAL AND STATE AUTHORITY

The existing Federal regulatory framework for the electric power industry was established early in the New Deal with the enactment of the FPA and PUHCA. The State regulatory structure, for the most part, preceded these Federal statutes. This regulatory framework has remained essentially unchanged: vertically-integrated utilities enjoy the advantages of monopoly franchise territories and authorized rates of return on investment, in exchange for an obligation to serve all customers within their respective service territories at regulated rates.

The Federal statutory framework does not readily accommodate individual State initiatives to institute competition among retail suppliers. In fact, certain Federal statutes which were drafted in the context of cost-of-service regulation may prove unworkable in a restructured market. Moreover, FERC may be unable to fully implement its open-access policy absent increased authority under the FPA. Amendments to the FPA will be necessary in order to enable both FERC and the States to implement competition effectively.

A. Clarify Federal Jurisdiction

*Proposal:* *Provide FERC with clear authority to order retail transmission in a transmission system other than where the end user is located to complete an authorized retail sale.*

*Reinforce FERC jurisdiction over rates, terms, and conditions of unbundled retail transmission.*

*Reinforce FERC authority relied upon to promulgate Order 888.*

*Exempt Alaska and Hawaii from the bill's requirements related to competition.*

*Provide that FERC transmission jurisdiction applies to municipal utilities and cooperatives.*

*Expand the applicability of civil penalties to cover violations under Part II of the FPA.*

A number of technical changes to the FPA are needed to ensure that the jurisdiction of FERC is sufficient to protect consumers in the newly competitive framework in electricity markets. First, FERC should have clear authority to order transmitting utilities to provide retail transmission in a utility system other than where the end user is located if needed to complete a State-authorized retail sale. This clarification of the law is necessary to ensure that transmission system owners in one system do not have the ability to frustrate State-sanctioned retail sales in another system. In addition, FERC's jurisdiction over rates, terms, and conditions for unbundled retail transmission should be clarified to avoid the potential burden of duplicative and potentially conflicting regulation in this area by providing FERC with jurisdiction over such transmission.

In 1996, FERC issued its landmark orders (Order Nos. 888 and 889) requiring jurisdictional utilities to file open access transmission tariffs. This was a critical step in opening markets to competition. However, FERC's authorities to require the filing of open access tariffs and to allow for the recovery of stranded costs resulting from the implementation of open access have been challenged. To ensure that open access will be implemented without any cloud of legal uncertainty, the FPA should be amended to remove any doubt that FERC has the authority to

require the filing of open access tariffs by rule without a hearing and that FERC has the authority to allow utilities to recover stranded costs resulting from implementation of the open transmission access requirement.

Order No. 888 applies to public utilities, but it does not apply directly to entities not subject to FPA jurisdiction. Effective wholesale competition requires that suppliers and purchasers of electricity have comparable access to all necessary transmission facilities. Limiting open access tariff requirements to those utilities subject to FERC's ratemaking jurisdiction would constrain and distort the development of competitive power markets. Accordingly, to provide for greater and more efficient competition, the transmission rates, terms and conditions of non-jurisdictional utilities should be subject to FERC's jurisdiction.

Wholesale and retail competition is made possible by the fact that the vast majority of consumers and electric generating plants are interconnected. However, Alaska and Hawaii are not connected to the grid in the continental United States. The Administration proposes that Alaska and Hawaii be exempted from the provisions of the Comprehensive Electricity Competition Act that are directly predicated on the ability of consumers and marketers to benefit from grid interconnections, including the requirements directly related to retail and wholesale competition.

Section 316A of the Federal Power Act authorizes civil penalties for violations of sections 211-214 of the Act or rules or orders issued under those sections. FERC should have the tools necessary to effectively enforce existing and proposed consumer protection and reliability requirements under the Act. The applicability of the currently available civil penalties – up to $10,000 per day – should be expanded to cover violation of any of Part II's regulatory regime.

### B. Clarifying State Jurisdiction to Implement Retail Competition

*Proposal* *Amend the FPA to clarify that it does not preempt States from (1) ordering retail competition, and (2) imposing a charge on the ultimate consumer's receipt of electric energy.*

The FPA should be amended to clarify that it does not preempt States from ordering retail competition. At least two State retail competition plans have been challenged on these grounds, and other such challenges are likely if this matter is not addressed. The FPA should also be amended to clarify that it does not preempt States from imposing a charge on the ultimate customer's receipt of electric energy. Such charges are being used by States to allow for the recovery of stranded costs and to fund public benefits programs.

### C. Clarifying State Authority to Impose Reciprocity Requirements

*Proposal:* *Provide States that have implemented retail competition with the authority to preclude an out-of-State utility with a retail monopoly from selling within the State unless that out-of-State utility permits customer choice.*

Retail competition will enable currently captive retail customers to purchase power from alternative suppliers. Such competition will likely result in some utilities losing a portion of their existing load to outside suppliers. If neighboring utilities allow retail competition, the utility with surplus power due to the advent of retail competition in its own formerly exclusive service area could mitigate or eliminate stranded costs by selling its surplus to the customers of these utilities. However, if neighboring utilities are not subject to a retail competition requirement, a utility in this situation would have greater difficulty in mitigating its losses and the amount of its stranded costs would likely increase.

States can assist utilities in gaining access to the customers of utilities over which the State has no ratemaking authority ("extra-jurisdictional utilities") by imposing a reciprocity requirement. Such a requirement would condition an extra-jurisdictional utility's access to customers of the jurisdictional utility on the extra-jurisdictional utility's providing retail access to its own customers. However, some States have expressed concern that the Constitution's Commerce Clause would limit their ability to impose reciprocity requirements on extra-jurisdictional suppliers. To provide States with clear authority, the FPA should be amended to provide States with the authority to impose a reciprocity requirement on all extra-jurisdictional suppliers of

electricity within the United States.

## IX. MISCELLANEOUS PROVISIONS

### A. Amendment to Bankruptcy Reform Act

*Proposal: Amend the Bankruptcy Act to make nuclear decommissioning costs a nondischargeable priority claim.*

Nuclear decommissioning costs should be a nondischargeable priority claim in a bankruptcy proceeding, which would ensure that no licensee would be able to avoid decommissioning liability. Section 503(b) of the Bankruptcy Reform Act of 1978 should be amended to provide that such costs should be a nondischargeable priority claim.

### B. Energy Information Administration (EIA) Study of Impacts of Competition

*Proposal: The EIA should be directed to study the impacts of wholesale and retail competition, and to protect proprietary information from disclosure.*

The collection of information relating to the impacts of wholesale and retail competition will be critical to the Federal and State governments' respective examinations of whether customers are receiving the economic benefits of an efficient competitive market, to suppliers' efforts to operate and plan efficiently, and to consumers' decisions as to which supplier of electricity best meets their needs. Provisions which would more thoroughly specify the information authorized to be collected by the Administrator for a study on the impacts of competition would enable the EIA to justify collection of this information, especially to reluctant information providers. Accordingly, the Administration recommends legislation to direct such an EIA study, and to authorize EIA to collect the necessary information.

### C. Effect on operation of antitrust laws

*Proposal: Provide that nothing in the new legislation affects operation of antitrust laws.*

Continued and effective operation of the antitrust laws is of critical importance in the successful implementation of retail competition. Accordingly, the Administration recommends the inclusion of an antitrust savings clause which provides that nothing in the legislation would be construed to modify, impair, or supersede the operation of the antitrust laws.

D. Eliminate antitrust review by Nuclear Regulatory Commission (NRC)

*Proposal: Eliminate antitrust review by NRC.*

Section 105c of the Atomic Energy Act (AEA) requires antitrust reviews by the NRC in connection with applications for an NRC license to construct or operate a commercial utilization or production facility. However, such reviews are no longer necessary in light of the authority of the Justice Department and FERC with respect to utility market power issues. Thus, the Administration recommends that section 105c be stricken from the Atomic Energy Act (AEA). This amendment to the AEA would nevertheless leave intact existing antitrust license conditions and the NRC's authority to enforce those existing conditions.

E. Taxes

(1) Nuclear Decommissioning Costs

*Proposal: Amend the Internal Revenue Code (IRC) relating to deductions to a qualified nuclear decommissioning fund.*

The amount of contributions to a qualified nuclear decommissioning fund a utility is entitled to deduct under section 468A of the IRC is the lesser of the "cost-of-service" amount or the "ruling amount." In a restructured market, if a nuclear power plant is no longer subject to cost-of-service ratemaking, it could be determined that the amount of decommissioning costs included in cost-of-service would be zero. Because the amount qualified for the tax deduction is the lesser of the amount included in the cost of service or the ruling amount, the tax deduction would then be zero. To address this problem, section 468A needs to be amended.

(2) Tax-Exempt Bonds

*Proposal:* *Amend the IRC to provide that : (1) private use limitations are inapplicable to outstanding bonds for publicly-owned generation, transmission or distribution facilities if used in connection with retail competition or open access transmission, and (2) tax-exempt financing is unavailable for new generation or transmission facilities. Tax-exempt financing would continue to be available for distribution facilities subject to private use limitation under current law .*

Restructuring of the electric utility industry forces a reexamination of the rules governing the use of tax-exempt bonds to finance facilities for the generation, transmission and distribution of electricity. The basic framework of current law rules was established to fit an era when individual electric systems, whether privately or publicly-owned, operated within clearly defined service territories and when the wheeling of power was not widely practiced. The basic premise of these rules is that tax-exempt bond financing is not generally available for facilities used to a significant extent by private persons in a capacity other than as a member of the general public. As the industry moves toward a more efficient, integrated structure, transmission and distribution facilities financed in prior years with tax-exempt bonds need to be open to use by private firms in the business of generating electricity. Public power systems are expected to participate in restructured environments that allow competing, private generators of electricity to sell to customers who formerly had no option but to be supplied by those public systems.

The efficiency and equity of a restructured industry depends upon leveling the playing field with respect to capital costs while at the same time ensuring that publicly-owned facilities are not discouraged by the Federal income tax rules from fully participating.

Accordingly, the Administration recommends that facilities financed with outstanding tax-exempt bonds should be free from the private use limitations provided that (i) such facilities continue to be owned by public entities, and (ii) such generation, transmission and distribution facilities are used in connection with retail competition or open access transmission. The Administration further recommends that new generation and transmission facilities be ineligible for tax-exempt bond

financing. The Administration recognizes that certain situations may warrant transition or other relief and would like to work with Congress to identify such situations and develop appropriate relief measures. Tax-exempt financing would continue to be available for distribution facilities subject to current private use limitations.

F. Generating Plant Efficiency

*Proposal:* *Direct the Department of Energy to conduct a study and prepare a report regarding the impact of competition in improving the efficiency of new and existing generating plants.*

It is important to examine the success of competitive markets in improving the efficiency of new and existing generating plants. Through increased power plant efficiency, lesser amounts of fuel will be necessary to generate the same amount of electricity. Both consumers and the environment would benefit because increased efficiency will lower electric prices and reduce the emission of greenhouse gases as well as other pollutants. Because of the importance of increasing efficiency for the success of competitive markets, the Administration proposes to require DOE to study the extent of efficiency improvement in competitive markets.